IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1030 of 1995

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHOWDHURY SHANKARBHAI GANESHBHAI - Applicant(s)

Versus

MODI JAYANTILAL MAGANLAL & 2 - Opponent(s)

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Appearance :

MR MEHUL SHARAD SHAH for Petitioner No(s).: 1.

MR VC DESAI for Respondent No(s).: 1 - 1.

None for Respondent No(s).: 2.

RULE SERVED for Respondent No(s).: 2 - 2,3.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 13/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 29th April, 1995 passed by the learned Assistant Judge, Mehsana in Regular Civil Appeal No.118/1993, the appellant (one of the plaintiffs in Regular Civil Suit

No.90/1985) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as **“the Rent Act”**).

The petitioner and the other plaintiffs are the tenants in shops in a building known as “Shreeji Market” constructed on land bearing City Survey No.1028 situated at Visnagar. The piece of land bearing City Survey No.1026 adjacent to the land bearing City Survey No.1028 belongs to the same owners i.e. the defendants. The plaintiffs instituted Regular Civil Suit No.90/1985 for permanent injunction restraining the defendants from making any construction on the suit land City Survey No.1026. According to the plaintiffs the plaintiffs and other occupants of the said “Shreeji Market” had a right of way from the suit land and they had a right to enjoy amenities of parking etc. on the suit land. The suit was contested by the defendants vide written statement Exh.15. The defendants denied that the plaintiffs had a right of way or of parking on the suit land. It was denied that the defendants were trying to develop the suit land in contravention of the building plans

sanctioned by the competent authority. The learned Civil Judge, by judgment and order dated 21st June, 1993, held that the plaintiffs had failed to prove that the suit land was being developed in contravention of the plans sanctioned by the competent authority; that under the sanctioned plans the suit land was required to be kept open; that the plaintiffs and the other tenants in the "Shreeji Market" had a right of way on the suit land. In view of the aforesaid finding the learned Civil Judge dismissed the suit. Feeling aggrieved, the petitioner had preferred the Regular Civil Suit No.118/1993 in the Court of learned District Judge, Mehsana. The learned Assistant Judge dismissed the Appeal. Therefore, the present Revision Application.

Mr.Shah has vehemently argued that the petitioner and the other occupants in the "Shreeji Market" had a right of way on the suit land; that even in past the suit land was being used by the land owners as passage. But for such representation made by the defendants the petitioner would not have taken the shop on rent; that the right of parking is essential supply as envisaged by Section 24 of the Rent Act. The defendants, therefore,

are liable to maintain the essential supply to the petitioners and the other occupants of “Shreeji Market”.

I see no substance in any of the contentions raised by Mr.Shah. As recorded herein above, the plaintiffs failed to prove that under the sanctioned plan the suit land was required to be kept open. It was never the case of the plaintiffs that under the terms of tenancy the plaintiffs had a right of way through the suit land nor it was the case of the plaintiffs to receive air and light from the suit land. The argument that but for the said parking facility the petitioner would not have taken the shop on rent is an afterthought. Such plea was not taken in the plaint. Nor was the claim based on the principle of “promissory estoppel”.

No case for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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